

MFM/sp

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GEORGE W. BROWN,

Plaintiff,

-against-

THE BROOKDALE HOSPITAL MEDICAL CENTER,
SANJEEV RAJPAL, M.D., CLASS SURGERY
BROOKLYN GROUP, P.C., THE MOUNT SINAI
HOSPITAL, HOWARD CHOI, M.D., DANIELLE
PERRET, M.D., BRIAN RIORDAN, M.D., NEW
FRANKLIN REHABILITATION & HEALTH CARE
FACILITY, LLC, FRANKLIN CENTER FOR
REHABILITATION & NURSING, INC., FRANKLIN
CENTER FOR REHABILITATION & NURSING,
ISRAEL SHERMAN, WILLIAM DUKE, M.D.,
HILLSIDE MANOR COMPREHENSIVE CARE
CENTER, and THE NEW YORK HOSPITAL MEDICAL
CENTER OF QUEENS,

Defendants.
-----X

ANSWER

Case No.: 08 CV 1093

**JURY TRIAL
DEMANDED**

Defendant THE BROOKDALE UNIVERSITY HOSPITAL AND MEDICAL CENTER,
by it attorneys, MARTIN CLEARWATER & BELL LLP, answers the plaintiff's complaint as
follows, upon information and belief:

1. Denies knowledge or information sufficient to form a belief as to each and every
allegation contained in the paragraphs of the complaint designated "1", "2", "3", "4", "6", "7",
"8", "9", "10", "11", "12", "13", "14", "15", "16", "17", "18", "19", "20", "21", "22", "23",
"24", "25", "26", "27", "28", "29", "30", "31", "32", "33", "34", "35", "36", "37", "38", "39",
"40", "41", "42", "43", "44", "45", "46", "47", "48", "49", "50", "51", "52", "53", "54", "55",
"56", "62", "63", "64", "65", "66", "67", "68", "69", "70", "71", "72", "73", "74", "75", "76",
"77", "79", "80" and "81".

2. Denies each and every allegation contained in the paragraphs of the complaint designated “5”, “57”, “58”, “59”, “60”, “61” and “78”.

AS TO THE FIRST CAUSE OF ACTION

3. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated “82”.

4. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated “83”, “84”, “85”, “86”, “87”, “88”, “89”, “90”, “91”, “92”, “93”, “94”, “95”, “96” and “97”.

AS TO THE SECOND CAUSE OF ACTION

5. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated “98”.

6. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated “99”, “100”, “101”, “102”, “103”, “104”, “105”, “106”, “107” and “108”.

AS TO THE THIRD CAUSE OF ACTION

7. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated “109”.

8. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated “110”, “111”, “112”, “113”, “114”, “115”, “116”, “117”, “118” and “119”.

AS TO THE FOURTH CAUSE OF ACTION

9. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated "120".

10. Denies each and every allegation contained in the paragraphs of the complaint designated "121", "122", "126", "127", "128", "129" and "130".

11. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "123" and "124".

12. Denies each and every allegation contained in the paragraphs of the complaint designated "125", except admits that defendant rendered certain professional services in accordance with acceptable medical standards and due care.

AS TO THE FIFTH CAUSE OF ACTION

13. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated "131".

14. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "132", "133", "134", "135", "136", "137", "138", "139", "140", "141" and "142".

AS TO THE SIXTH CAUSE OF ACTION

15. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated "143".

16. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "144", "145", "146", "147", "148", "149", "150", "151", "152" and "153".

AS TO THE SEVENTH CAUSE OF ACTION

17. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated "154".

18. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "155", "156", "157", "158", "159", "160", "161", "162", "163", "164" and "165".

AS TO THE EIGHTH CAUSE OF ACTION

19. Repeats and reiterates each and every denial and denial of knowledge or information sufficient to form a belief as to each of the allegations of the complaint reiterated and realleged by the plaintiff in the paragraph of the complaint designated "166".

20. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "167", "168", "169", "170", "171", "172", "173", "174", "175", "176" and "177".

AS TO THE DAMAGES

21. Denies each and every allegation contained in the paragraphs of the complaint designated "178".

AS TO THE CERTIFICATE OF MERIT

22. Denies knowledge or information sufficient to form a belief as to each and every allegation contained in the paragraphs of the complaint designated "179".

AS A FIRST AFFIRMATIVE DEFENSE

23. Defendant THE BROOKDALE UNIVERSITY HOSPITAL AND MEDICAL CENTER denies liability, but if liability is found against this defendant and the liability is found to be 50% or less of the total liability assigned to all persons liable, then this defendant invokes the limits on liability for noneconomic loss set forth in CPLR §1601.

AS A SECOND AFFIRMATIVE DEFENSE

24. That defendant asserts the terms, provisions, limitations and rights contained in §4545 of the CPLR.

AS A THIRD AFFIRMATIVE DEFENSE

25. Whatever injuries plaintiff may have sustained at the time and place alleged in the complaint were caused in whole or in part or were contributed to by the culpable conduct and want of care on the part of the plaintiff.

JURY DEMAND


26. Defendants hereby demand a trial by jury on all issues so triable.

WHEREFORE, defendant THE BROOKDALE UNIVERSITY HOSPITAL AND MEDICAL CENTER demands judgment dismissing the complaint herein, together with the costs and disbursements of this action.

Dated: New York, New York
March 7, 2008

Yours, etc.,

MARTIN CLEARWATER & BELL LLP

By: 
Michael F. Madden (MFM 7075)

A Member of the Firm

Attorneys for Defendant

THE BROOKDALE UNIVERSITY HOSPITAL AND
MEDICAL CENTER

220 East 42nd Street, 13th Floor

New York, New York 10017

(212) 697-3122

TO:

LEAHEY & JOHNSON, P.C.

Attorneys for Plaintiff

120 Wall Street, Suite 2220

New York, New York 10005

(212) 269-7308

SANJEEV RAJPAL, M.D. &

CLASS SURGERY BROOKLYN GROUP, P.C.

1633 Remsen Avenue

Brooklyn, New York 11236

NO APPEARANCES TO DATE

NEW FRANKLIN REHABILITATION and HEALTH CARE FACILITY, LLC.,

FRANKLIN CENTER FOR REHABILITATION & NURSING, INC. and

FRANKLIN CENTER FOR REHABILITATION & NURSING

147-27 Franklin Avenue

Flushing, New York 11355

NO APPEARANCES TO DATE

ISRAEL SHERMAN

7233 137th Street

Flushing, New York 11367-2310

NO APPEARANCE TO DATE

THE NEW YORK HOSPITAL MEDICAL CENTER OF QUEENS

56-45 Main Street

Flushing, New York 11355

NO APPEARANCE TO DATE

WILLIAM DUKE, M.D. and
HILLSIDE MANOR COMPREHENSIVE CARE CENTER
118-11 Hillside Avenue
Hollis, New York 11423

NO APPEARANCES TO DATE

THE MOUNT SINAI HOSPITAL,
HOWARD CHOI, M.D.,
DANIELLE PERRET, M.D. and
BRIAN RIORDAN, M.D.

One Gustave L. Levy Place
New York, New York 10029

NO APPEARANCES TO DATE

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2008, the foregoing ANSWER was filed via the Court's electronic filing System. Parties may access this filing through the Court's system. Service was also made via regular U.S. Mail on the following:

LEAHEY & JOHNSON, P.C.
Attorneys for Plaintiff
120 Wall Street, Suite 2220
New York, New York 10005

SANJEEV RAJPAL, M.D. & CLASS SURGERY
BROOKLYN GROUP, P.C.
1633 Remsen Avenue
Brooklyn, New York 11236
NO APPEARANCES TO DATE

NEW FRANKLIN REHABILITATION and
HEALTH CARE FACILITY, LLC., FRANKLIN
CENTER FOR REHABILITATION & NURSING,
INC. and FRANKLIN CENTER FOR
REHABILITATION & NURSING
147-27 Franklin Avenue
Flushing, New York 11355
NO APPEARANCES TO DATE

ISRAEL SHERMAN
7233 137th Street
Flushing, New York 11367-2310
NO APPEARANCE TO DATE

THE NEW YORK HOSPITAL MEDICAL CENTER
OF QUEENS
56-45 Main Street
Flushing, New York 11355
NO APPEARANCE TO DATE

WILLIAM DUKE, M.D. and HILLSIDE MANOR
COMPREHENSIVE CARE CENTER
118-11 Hillside Avenue
Hollis, New York 11423
NO APPEARANCES TO DATE

THE MOUNT SINAI HOSPITAL,
HOWARD CHOI, M.D.,
DANIELLE PERRET, M.D. and
BRIAN RIORDAN, M.D.
One Gustave L. Levy Place
New York, New York 10029
NO APPEARANCES TO DATE

By: _____


Michael F. Madden (MFM 7075)